U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mark Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a software engineer at Cisco Systems, Inc. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, filed on October 7, 2004, counsel indicated that a brief would be forthcoming within forty-five days. To date, over seven months later, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision. The attorney of record has confirmed that no subsequent brief has been submitted.

The statement on the appeal form reads simply: "We are in the process of gathering additional information for the Petitioner to adequately respond to the appeal" (sic). This statement contains no specific allegation of error. The assertion that a brief will follow is not, by itself, a substantive appeal.

We note that the petitioner is the beneficiary of another immigrant visa petition filed by an employer on February 5, 2003, with a priority date of January 18, 2001. This petition was approved on August 27, 2003. It is possible that the approval of this second petition contributed to the apparent decision not to pursue the present appeal. We further note that the discrepancy between the filing date and the priority date shows that the second petition included an approved labor certification. Now that the job offer/labor certification requirement has been met, any attempt to secure a waiver of that requirement would appear to be moot.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the appeal must be summarily dismissed.

**ORDER:** The appeal is dismissed.